

EXHIBIT J

PART 6

1 Q. I appreciate that, but that was not
2 responsive to my question, sir. My question is,
3 assuming the benefits of the foot -- gated foot
4 control equal the detriments of the foot control,
5 do you believe -- Strike that.

6 Sir, I want you to assume that the
7 benefits of the gated foot control are equaled by
8 the detriments of the gated foot control; in that
9 situation do you believe a gated foot control
10 should be supplied with a machine?

11 MR. ROBINSON: Object to the form,
12 the breadth.

13 A. The problem is that what you're
14 balancing is or what you're stating is a
15 characterization of my testimony earlier when I
16 said in the overall scheme of use of these foot
17 controls. There are places, there are industrial
18 places that I've been into where foot controls
19 with gates on the openings of them are completely
20 functional, and then there are other places where
21 they are completely useless, and then there are
22 other places, yet, that there's a mix.

23 So in the overall scheme of things,
24 it may be a push between whether it's more

1 beneficial than it isn't; but, you know, for some
2 people, it may be just what they need, and for
3 those people, it's worth being there.

4 So I guess that answers your
5 question by saying I would not recommend not to
6 provide a gated foot switch, if that is what the
7 selection of an original equipment manufacturer
8 chose to do or if that's what a user chose to buy
9 from Linemaster, you know. If they can make it
10 work for them and they can supervise the proper
11 use of it, then that's fine and that's perfect.
12 That's exactly what we're trying to achieve in
13 safety.

14 Q. I understand what your analysis is,
15 but I'm asking you that, if you assume that the
16 benefits of a gated switch in the general
17 population to which you're selling the switch
18 along with your machine are equal to the
19 detrimental effects that switch will provide, in that
20 situation do you provide the gated foot control as
21 a standard piece of equipment?

22 MR. ROBINSON: Objection, asked and
23 answered. I object to the form, but he's just
24 indicated an answer to that very question saying

1 that you can't do it like that.

2 A. I can't answer that question any
3 differently. If you don't like what I said, I'm
4 sorry, you're going to have to live with it
5 because I cannot come up with a different answer.

6 Q. Well, you haven't answered the
7 question.

8 MR. ROBINSON: That's argumentive
9 and that's not true at all.

10 MR. HARTMAN: Fine, fine.

11 BY MR. HARTMAN:

12 Q. With regard to including a safety
13 device on a machine, if the cost is equal to the
14 detriment of including that device on a machine,
15 do you as a safety engineer include that device on
16 the machine as standard equipment or does the
17 cost -- does the benefit of the machine have to
18 outweigh the detriment of the safety device?

19 MR. ROBINSON: Objection to the
20 form.

21 A. You don't do that, you don't look at
22 one safety device and try to do a cost/benefit
23 analysis of just that device. You have to look at
24 the overall picture of what is being done, the

1 cost of the machine, cost of everything, the
2 production and everything involved in it. You
3 just don't look at the cost of a gate on a foot
4 switch versus the cost of no gate on the same foot
5 switch.

6 Q. No, I'm sorry, maybe that's our
7 confusion. When I talk about "cost," I'm talking
8 about -- In the context of a gated foot control,
9 I'm saying the cost of the gated foot control
10 would be the increase in incidence -- according to
11 your testimony, the increase of incidence of
12 riding the foot pedal and accidents that may occur
13 because of that. The benefit of the gated foot
14 control is that it prevents inadvertent activation
15 of the machine in certain instances. When I talk
16 about the "cost," I'm talking about the number of
17 accidents that it may -- the number of people that
18 might be injured because of the device, and I'm
19 talking about the benefit, the number of people
20 who are protected by the device.

21 I'm asking you, sir, when you do an
22 analysis of a safety feature, do you do a
23 cost/benefit analysis in that regard?

24 MR. ROBINSON: I object to the form

1 of the question. That was asked previously, and
2 he gave an answer at length.

3 Q. Sir?

4 A. You do the cost/benefit analysis
5 that is more comprehensive than what you're just
6 simply asking here, and if everything balances
7 out, then you have to make the decision.

8 Q. Who is "you"?

9 A. You as the user or you as a supplier
10 or you as the one making the decision of whether
11 to go with a flapped foot switch or gated foot
12 switch or non gated foot switch. You have to make
13 that moral, that economic, you know, that
14 practical decision. If you're the user and you're
15 in a facility and you're looking at your employees
16 and you know what your employees do and you know
17 what their habits are, you go with the best way --
18 the best feature that is compatible with what they
19 do and achieves the greatest safety for you.

20 Q. But how about if you're the
21 manufacturer of the press brake and you're
22 including a gated -- a switch with your machine,
23 do you make that same type of analysis?

24 MR. ROBINSON: Object to the form

1 of the question.

2 A. If you -- You know, if you have the
3 information needed to make that kind of
4 cost/benefit analysis, and for the most part,
5 manufacturers of those machines I believe do not
6 have that information because they don't know the
7 work force, they don't know the environment,
8 supervisory environment, the management
9 environment within which the machines are going.
10 So they make a decision, I would guess, based upon
11 the custom and practice in the industry at the
12 time. Look around at what the other machine tool
13 makers are using, you know, is it practical for
14 your particular machine.

15 You know, I'm sure Singer who makes
16 sewing machines, if they still make sewing
17 machines, are not going to include or consider
18 gated foot switches for their sewing machines.
19 It's an inappropriate application for their
20 particular situation. You know, that's the kind
21 of thing that I would expect an OEM to do.

22 Q. Did Cincinnati ever do an analysis
23 as to the people that would be protected by gated
24 foot switches as opposed to people who would be

1 injured by gated foot switches because of misuse
2 of the gated foot switch?

3 MR. ROBINSON: Objection, asked and
4 answered.

5 A. I don't know. I never saw one.

6 Q. Okay. On page 4 of your report, you
7 talk about the OSHA citation that was given to
8 Corry, I believe; am I correct?

9 MR. ROBINSON: That he references
10 it on page 4 or that they were given a citation?

11 A. Yeah, I believe it's in the bottom
12 paragraph, as a matter of fact, 1910.212 is the
13 section under which the Corry Manufacturing was
14 cited by OSHA.

15 Q. Would you agree, sir, that no matter
16 how bad the foot switch would have been as
17 supplied by Heim, that Heim would not have ever --
18 would not have received any citation from OSHA?

19 MR. ROBINSON: I object to the
20 form.

21 A. This citation, this whole thing
22 about OSHA here and the citation under 212 against
23 Corry had nothing to do with the foot switch. It
24 doesn't even talk about the foot switch.

1 Q. I understand that. But if the foot
2 switch was defective, assuming that it was, OSHA
3 wouldn't cite Heim; would they?

4 MR. ROBINSON: Object to the form
5 of the question.

6 A. No.

7 Q. OSHA just cites the employer, they
8 don't go cite the manufacturers of machinery; do
9 they?

10 A. No. We talked about that earlier
11 this morning.

12 Q. Just clarifying it with regard to
13 this specific provision. So the fact that OSHA
14 cited Corry for certain violations is not an
15 indication that the Heim press brake was safe or
16 not safe --

17 MR. ROBINSON: I'll object to
18 the --

19 Q. -- in its design?

20 MR. ROBINSON: I apologize for
21 interrupting. I'll object to the form of the
22 question.

23 A. That's correct. It's relative to
24 the use of the machine on the day of the Lindquist

1 occurrence.

2 Q. On page 5 we talk about HOOD. Is it
3 your testimony -- I'm going to the second
4 paragraph. It appears that you -- that you're
5 indicating that the business community pressured
6 OSHA to repeal HOOD as it relates to power
7 presses?

8 A. The metal stamping industry, yes.

9 Q. And they had the ability to pressure
10 OSHA to repeal a provision that you think is safe?

11 MR. ROBINSON: I'll object to the
12 form of that question.

13 A. The metal stamping industry filed
14 suit against OSHA for that particular provision
15 and the federal law.

16 Q. And then ANSI modified its standard
17 to comply with the -- to mirror OSHA?

18 A. No. As you alluded to before in
19 your question, ANSI didn't do anything. It's the
20 subcommittee that wrote B 11.1 chose to modify its
21 standard and be consistent with the OSHA
22 requirement.

23 Q. But the committee still believed
24 that the HOOD procedure, mandating HOOD, was a

1 safer means of operating the machinery, correct?

2 A. Correct.

3 Q. Next paragraph, you say: "The facts
4 of this case require us to return to the
5 discussion of press brakes. Ms. Lindquist was not
6 injured while operating power press." Did I
7 correctly read that?

8 A. Yes.

9 Q. And that was an important
10 distinction to you in analyzing this accident, is
11 that she was operating a press brake, not a power
12 press; am I correct?

13 A. Yes.

14 Q. Next paragraph, you indicate that
15 "The evidence shows that a foot switch was
16 provided with the machine in 1978," correct?

17 A. Yes.

18 Q. Is that still your testimony today?

19 A. Yes.

20 Q. Next sentence says that, "There is
21 no evidence to indicate what make or model foot
22 switch was provided at that time"; am I correct in
23 your statement?

24 A. Yes.

1 Q. Am I correct today that you have no
2 opinion as to the make or model of the foot switch
3 that was provided with the Heim press brake?

4 A. That's correct.

5 Q. Further, your report indicates in
6 the same paragraph, "Also the evidence does not
7 give us any indication if the original end user,
8 Avco-Lycoming, utilized the originally provided
9 foot switch or added its own or installed a palm
10 button station or other control device on the
11 press brake when incorporating it into its
12 production operations"; am I correct?

13 A. Yes.

14 Q. And is that your testimony today?

15 A. Yes.

16 Q. So you have no evidence regarding
17 that issue either way?

18 A. As to what Heim did with the machine
19 once they received it, that's correct.

20 Q. Or with regard to Avco-Lycoming and
21 what they may have done with a foot switch or two
22 palm button switch?

23 A. I'm sorry, did I say Heim?

24 Q. Yes.

1 A. I meant Avco. With regard to what
2 Avco-Lycoming did with the machine once they
3 received it, we have no information.

4 Q. And you have no personal information
5 with regard to what Avco-Lycoming did with regard
6 to a two palm button switch or a foot pedal --

7 A. Correct.

8 Q. -- or a foot control; am I correct?

9 A. Correct.

10 Q. When making a decision to add a
11 safety feature on a machine as standard equipment,
12 what analysis would you perform?

13 MR. ROBINSON: Object to the form
14 of the question, the breadth of the question, and
15 it's also been addressed at length during the
16 deposition.

17 A. I believe the considerations are to
18 look at what you want to achieve by adding
19 whatever device it is and the anticipated
20 accomplishment of reaching those goals or those,
21 you know, achievements, which is does this
22 particular device actually get you there, does not
23 it not introduce hazards of its own, is it easily
24 maintained, is it reliable, that type of thing.

1 Q. And when you say does it introduce
2 any additional hazards, would that be you would
3 have to factor in the cost side of the thing,
4 meaning, you know, how many hazards does it
5 introduce, how many people could be hurt compared
6 to the benefits?

7 A. No, not necessarily going that far
8 with other injuries and subsequent occurrences and
9 things like that. It's just that you do a risk
10 assessment, you put this device on whatever it
11 might be, you do a risk assessment after
12 incorporating this device and evaluate it to
13 determine if it controls the hazard, hazards, that
14 you initially intended it to control.

15 And then you also assess it to
16 determine if there are any new hazards that could
17 present the opportunity for an occurrence to take
18 place or injury by the placement of this device or
19 this safety whatever it is. And if you do
20 identify new hazards, then you either modify,
21 remove and try something else or add another type
22 of safety device to incorporate or to safeguard
23 against those particular new hazards. The whole
24 risk assessment is an iterative process, you keep

1 looking at it from different angles.

2 Q. Thank you. At the bottom of page 6,
3 last sentence, it says: "In 1978 when Heim
4 selected the foot switch that was originally
5 provided with the press brake, there is no
6 possible way they would have been able to foresee
7 any of the above considerations outlined in the
8 above Safety Brief conclusion."

9 A. Yes.

10 Q. Would you explain that to me? I
11 don't understand what you mean by that.

12 MR. ROBINSON: One second. I'll
13 object to the form of the question.

14 A. Okay. Previously in that paragraph,
15 I make reference to Safety Brief, Volume 12, no.
16 4, "Foot Controls, Riding the Pedal," and in the
17 conclusion, IV, paragraph 9, it states: "The
18 proper selection of a foot control is not
19 straightforward. It involves many considerations,
20 including knowledge of operator movement in the
21 work space, steadiness requirements for part
22 insertion, the use of point of operation
23 safeguards, technology transfer, maximum or
24 continuous stroke rate of the controlled machine,

1 and the various anticipated uses of the foot
2 control on multi-mode machinery."

3 Now, all of those variables are
4 considerations that should be taken when applying
5 controls to machines. And my statement is saying
6 that Heim in 1978 had no ability to anticipate
7 what Corry Manufacturing would be doing with
8 regard to these elements in 2001 or 2002.

9 Q. Okay. Thanks for that
10 clarification.

11 THE VIDEOGRAPHER: I need to go off
12 the record to change the tape. Good time to
13 break?

14 MR. HARTMAN: Yeah.

15 THE VIDEOGRAPHER: We're going off
16 the record. One second, please.

17 (Brief recess.)

18 THE VIDEOGRAPHER: Tape No. 3,
19 we're back on the record. You may begin.

20 BY MR. HARTMAN:

21 Q. Sir, would you agree that the
22 requirement that an operator place his or her
23 hands into the die space area is a misuse of the
24 machine in certain circumstances and not a misuse

1 of the machine in other circumstances?

2 MR. ROBINSON: Object to the form
3 of that question.

4 A. No, I don't think so. I think that
5 a press brake -- If the job is given sufficient
6 planning, I can't think of a press brake job that
7 I've seen that can't be done with the operator not
8 having to place his hands between the dies in the
9 machining operation.

10 Q. Are you aware of a point of
11 operation protection safety device that pulls
12 one's hands out of the die area when --

13 A. Yes.

14 Q. -- when the ram comes down?

15 A. Yes.

16 Q. Is that an approved -- Is that an
17 acceptable point of operation safety device on a
18 press brake?

19 MR. ROBINSON: Objection to the
20 form.

21 A. What you're referring to is called a
22 pull-back device.

23 Q. Yeah.

24 A. And it is an acceptable point of

1 operation safeguarding device for press brakes,
2 and when properly adjusted, it prevents the
3 operator from reaching into the die area. It does
4 not allow him to get between the dies.

5 Q. So even utilizing that type of
6 safety device, you would not expect an operator to
7 put his or her hands in the die area?

8 A. If the pull-back is properly
9 adjusted, his hands -- his or her hands should not
10 be able to get between the dies.

11 Q. Would you agree that there are a lot
12 of -- that there are numerous reports of injuries
13 occurring to operators who get their hands caught
14 in the point of operation area?

15 MR. ROBINSON: I'll object to the
16 form of the question. It's also been asked and
17 answered. "Numerous" is vague and broad.

18 A. Point of operation injuries do occur
19 on press brakes.

20 Q. Would you agree that point of
21 operation injuries occur most typically when a
22 body part is placed in the die area?

23 MR. ROBINSON: Objection to form of
24 the question.

1 A. Yes.

2 Q. And would you agree that most point
3 of operation injuries occur when an operator
4 places his or her hands or fingers into the die
5 area?

6 A. By definition, that's what's going
7 to happen, yes.

8 Q. What is the National Safety Council?

9 A. It's an organization that's
10 committed to safety of the -- I can't even say, I
11 can't really say the average worker in America
12 because they go into highway safety, and campus
13 safety, and off-the-job safety. They address all
14 different kinds of safety-related issues.

15 Q. Is it an authoritative organization?

16 MR. ROBINSON: I'll object to the
17 form of the question.

18 A. No. I've indicated back earlier
19 this morning that I didn't feel that National
20 Safety Council publications are authoritative.

21 Q. Are you aware of any National Safety
22 Council articles relating to press brake safety
23 that you would deem authoritative?

24 A. No. The data sheets and the

1 information that's found on the "Accident
2 Prevention Manual" are representative of best
3 practices. Actually, the data sheet on press
4 brakes is echoing the B 11 standard, but it's not
5 verbatim to the B 11.3 standard; so even though I
6 participated in the authoring of it, I don't
7 consider it authoritative.

8 MR. HARTMAN: I have no further
9 questions. Thank you for your time.

10 MR. ROBINSON: I don't have any
11 questions. We'll read.

12 THE WITNESS: Read and sign.

13 MR. ROBINSON: Read, if you would,
14 just to be sure we're comfortable with the
15 transcript, no disrespect to the court reporter.

16 THE VIDEOGRAPHER: At this time
17 we're going off the record. This concludes
18 today's deposition. Time now is 12:39. One
19 second, please.

20

21 DENNIS R. CLOUTIER

22 DEPOSITION CONCLUDED AT 12:39 P.M.

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24

1 C E R T I F I C A T E

2 STATE OF OHIO :

3 : SS

4 COUNTY OF HAMILTON :

5 I, LISA CONLEY, RMR, CRR, CCP, the
6 undersigned, a duly qualified and commissioned
7 notary public within and for the State of Ohio, do
8 hereby certify that before the giving of his
9 aforesaid deposition, the said DENNIS R. CLOUTIER
10 was by me first duly sworn to tell the truth, the
11 whole truth and nothing but the truth; that the
12 foregoing is the deposition given at said time and
13 place by the said DENNIS R. CLOUTIER; that said
14 deposition was taken in all respects pursuant to
15 agreement; that said deposition was taken by me in
16 stenotypy and transcribed by computer-aided
17 transcription under my supervision; that the
18 transcribed deposition is to be submitted to the
19 witness for his examination and signature; that I
20 am neither a relative of nor attorney for any of
21 the parties to this cause, nor relative of nor
22 employee for any of their counsel, and have no
23 interest whatever in the result of the action.

24

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IN WITNESS WHEREOF, I hereunto set my
hand and official seal of office at Cincinnati,
Ohio, this

day of , 2006.

MY COMMISSION EXPIRES: LISA CONLEY, RMR, CRR, CCP
JULY 28, 2009. NOTARY PUBLIC-STATE OF OHIO

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1 IN WITNESS WHEREOF, I hereunto set my
2 hand and official seal of office at Cincinnati,
3 Ohio, this

4 10th day of *May*, 2006.
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8 MY COMMISSION EXPIRES: *Lisa Conley*, RMR, CRR, CCP
9 JULY 28, 2009. NOTARY PUBLIC-STATE OF OHIO
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